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December 20, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: ET Docket No. 04-373
SafeView, Inc., Request for Waiver of Sections 15.31 and 15.35 of the
Commission's Rules
Ex Parte Communication

Dear Ms. Dortch:

On behalf of SafeView, Inc., pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication.

This responds to the December 15, 2005, filing of RF Development, LLC.

While agreeing that SafeView's system has important and desirable public safety benefits,¹ RF Development objects to proposed unlicensed operation in LMDS spectrum without the consent of LMDS licensees.²

¹ Letter from Charles E. Walters to Marlene H. Dortch, Secretary, FCC at 3 (filed Dec. 15, 2005).

² *Id.* at 1-2.

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It is well settled that the Commission can authorize the non-interfering use of licensed spectrum. The Commission has twice so held.³ The U.S. Court of Appeals for the D.C. Circuit agrees.⁴ There is no authority to the contrary.

To be sure, licensed operations, such as RF Development's, are entitled to protection from harmful interference due to unlicensed devices, such as SafeView's.⁵ But licensees do not have an *a priori* veto over non-interfering devices.

Please do not hesitate to call with any questions.

Respectfully submitted

Mitchell Lazarus
Counsel for SafeView, Inc.

cc: Courtesy service list

³ *Ultra-Wideband Transmission Systems*, 19 FCC Rcd 24558 at paras. 67-78 (2004); *Certification of Equipment in the 24.05-24.25 GHz Band*, 18 FCC Rcd 15944 at para. 14 (2003).

⁴ *AT&T Wireless Services, Inc. v. FCC*, 270 F.3d 959 (D.C. Cir. 2001) (subsequent history omitted).

⁵ 47 C.F.R. Sec. 15.5(b).

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